IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

Writ Petition No 430 of 2005

Chandrarao Balkrishna Sawant and ors.. petrs
vs
State of Mah and ors..Respondents
with
Writ Petition No 436 of 2005
Arun Nagesh Samudra and ors.. petrs
vs
State of Mah and ors..Respondents
with
Writ Petition No 40l5 of 2005

Madhukar Damodar Tredesai and ors.. petrs
vs
State of Mah and ors..Respondents

Mr P.V.Deware for petitioners
Mr. C R Sonawane AGP for Respondents

CORAM; A.P.SHAH & D.Y.CHANDRACHUD JJ.

Dated 23.6.2005

P.C:

. Rule. The learned AGP waives service for respondents. By consent, Rule is made returnable forthwith.

2. These petitions are directed against a common order passed by the Maharashtra Administrative Tribunal on 3.l2.2004 in Original Application No.832 of 2003 and companion Original Applications. Briefly the facts are that the petitioners were working as Lab Technicians under the Public Health

Department of the State of Maharashtra. The petitioners were granted benefit of time bound promotions in terms of the Government Resolution dated 8.6.l995. It is not disputed that they do not have B.Sc degree. After they were granted time bound promotions, show cause notice was issued to them pointing out that they were not eligible to get salary of higher post of Malaria Supervisors and they were asked to show cause as to why higher scale granted to them under the said G.R. should not be recovered. On receipt of the reply order came to be passed directing recovery of the excess amount paid to the petitioners. It is this order of recovery dated 30.4.2003 has been challenged before the tribunal in the aforesaid Original Applications. The tribunal held that the petitioners were not entitled to time bound promotions in terms of the G.R.dated 8.6.l995 and dismissed the Original Applications.

3. The issue that arises for consideration is whether the petitioners can legitimately claim time bound promotions on the ground that they have completed l2 years service in terms of the G.R.dated 8.6.l995. The said G.R. clearly states that the posts which are not having promotional

channel or isolated are eligible for the scales as per the said G.R. The promotional channel of Laboratory Technician is as under:

> "Lab Technician- Health Supervisor- Non Medical Health Officer- Dist Malaria Officer of Malaria Officer or Biologist"

Under the Recruitment Rules, l993 the laboratory technicians who do not have B.Sc degree are not eligible for promotion for the post of Health Supervisor. Only Lab Technicians having B.Sc degree are eligible for promotion channel. The time bound promotions have been given after the Recruitment Rules of l993 came into force. The tribunal therefore rightly held that the time bound promotion granted to the petitioners was therefore in violation of the recruitment rules and cannot be sustained. The tribunal also pointed out the anomaly that those who fulfilled conditions laid down in the recruitment rules i.e Malaria Technicians having B Sc degree will get payscale of Rs.5000-8000 whereas the petitioners have been given payscale of Rs.5500-9000 which is also a factor to be taken into account. The time bound promotion granted to the petitioners was thus

clearly in violation of the rules.

4. Mr Daware, learned counsel for the petitioners however, contended and in our opinion rightly, that once higher payscale was fixed and the amount is paid to the employee, thereafter subsequently the said decision is cancelled or revoked no recovery can be ordered against the employee. He brought to our notice the decision of the Supreme Court in P H Reddy vs N T R D reported in 2002(2) SLR 694. In that case the Supreme Court found that the order of pay fixation passed by the appropriate authority does not require interference. However the Supreme Court observed that the employee who had been in receipt of higher amount on account of erroneous fixation by the authority should not be asked to repay the excess pay drawn and therefore that part of the order of the authority was set aside. Similar is the view taken by the Supreme Court in Shyam Babu Verma vs Union of India,(l994) 27 ETC l2l. In the light of the law laid down by the Supreme Court it is clearly seen that no recovery can be made on the basis of subsequent revocation or cancellation of the pay fixation.

5. In view of the aforesaid discussion all these

petitions are partly allowed. The impugned orders of recovery of amount which are challenged in the respective petitions are quashed and set aside. It is made clear that if any amount of retiral benefit is withheld on account of impugned decision of recovery of amount same shall be released forthwith in accordance with law. Similarly if any amount is already recovered same shall be refunded to the concerned employee. Rule in each of the petition is made partly absolute accordingly with no order as to costs.